

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

GEORGE DOLAN, JR.,

Plaintiff,

v.

STEVE FRANKE,

Defendant.

Case No. 3:11-cv-00457-AC

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge John V. Acosta issued Findings and Recommendation in this case on May 7, 2015. Dkt. 59. Judge Acosta recommended that Dolan’s petition for a writ of habeas corpus be denied.

Under the Federal Magistrates Act (“Act”), the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C.

§ 636(b)(1). If a party files objections to a magistrate’s findings and recommendations, “the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

Dolan timely filed an objection. Dkt. 61. Dolan argues that although there is no constitutional right to effective representation in state collateral proceedings and although

ineffective counsel in such proceedings is not a statutory ground for habeas relief, his attorney on state collateral review “functioned” as trial counsel by participating in a resentencing proceeding. Dolan argues that that his claims for ineffective assistance of collateral-review counsel should therefore be permitted to proceed. The Court has reviewed *de novo* those portions of Judge Acosta’s Findings and Recommendation to which Dolan has objected, as well as Dolan’s objections and the State’s response.

The Court agrees with Judge Acosta’s reasoning regarding ineffective assistance of collateral-review counsel and ADOPTS Judge Acosta’s Findings and Recommendation (Dkt. 59). Dolan’s second amended petition for a writ of habeas corpus (Dkt. 26) is DENIED. Moreover, the Court declines to issue a Certificate of Appealability on the basis that Dolan has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 1st day of July, 2015.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge